

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

CAPELLA PHOTONICS, INC.,

Plaintiff

v.

INFINERA CORPORATION, TELLABS,
INC., TELLABS OPERATIONS INC.,
CORIANT AMERICA INC., and CORIANT
(USA) INC.,

Defendants.

Civ. No. 2:20-cv-00077

**DEFENDANTS' MOTION (1) TO STRIKE CAPELLA'S UNTIMELY DISCLOSED
PRIORITY DATE OR, IN THE ALTERNATIVE, (2) FOR SUMMARY JUDGMENT
THAT THE EARLIEST POSSIBLE PRIORITY DATE OF THE ASSERTED CLAIMS IS
MARCH 19, 2001 OR THAT THE KRAMER AND ROSE PATENTS ARE PRIOR ART
EXHIBIT 1**

Dated: April 26, 2021

Respectfully submitted,

By: /s/ Kurt Pankratz
Kurt Pankratz (TX SBN 24013291)
Email: kurt.pankratz@bakerbotts.com
Melissa Muenks (TX SBN 24097442)
Email: melissa.muenks@bakerbotts.com
BAKER BOTTS LLP
2001 Ross Avenue, Suite 900
Dallas, TX 75201
Telephone: (214) 953-6500
Facsimile: (214) 953-6503

Sarah J. Guske (CA SBN 232467)
Email: sarah.guske@bakerbotts.com
BAKER BOTTS LLP
101 California Street, Suite 3600
San Francisco, TX 94111-5843
Telephone: (415) 291-6200
Facsimile: (415) 291-6300

John Fredrick Gaustad (CA SBN 279893)
Pro Hac Vice
Email: john.gaustad@bakerbotts.com
BAKER BOTTS LLP
1001 Page Mill Road
Building One, Suite 200
Palo Alto, CA 94301
Telephone: (650) 739-7500
Facsimile: (650) 739-7699

Lauren J. Dreyer (DC 1007189)
Pro Hac Vice
Email: lauren.dreyer@bakerbotts.com
BAKER BOTTS LLP
700 K Street NW
Washington, DC 20001
Telephone: (202) 639-7700
Facsimile: (202) 639-7890

*Attorneys for Defendants, Infinera
Corporation, Tellabs, Inc., Tellabs
Operations Inc., Coriant America Inc., and
Coriant (USA) Inc.*

CERTIFICATE OF SERVICE

I hereby certify that counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on April 26, 2021.

By: /s/ Kurt Pankratz
Kurt Pankratz

EXHIBIT 1

UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

CAPELLA PHOTONICS, INC.,

Plaintiff,

v.

INFINERA CORPORATION, TELLABS,
INC., TELLABS OPERATIONS INC.,
CORIANT AMERICA INC., and CORIANT
(USA) INC.,

Defendants.

Case No. 2:20-cv-00077-JRG

**PLAINTIFF CAPELLA PHOTONICS, INC.’S DISCLOSURE OF ASSERTED
CLAIMS AND INFRINGEMENT CONTENTIONS TO INFINERA CORPORATION,
TELLABS, INC., TELLABS OPERATIONS INC., CORIANT AMERICA INC.,
AND CORIANT (USA) INC.**

I. P.R. 3-1. Disclosure of Asserted Claims and Infringement Contentions

Pursuant to LR 3-1, plaintiff Capella Photonics, Inc. (“Capella” or “Plaintiff”), by and through its counsel, hereby submits the following Disclosure of Asserted Claims and Infringement Contentions (“Disclosure” and/or “Contentions”) with respect to defendants Infinera Corporation, Tellabs, Inc., Tellabs Operations Inc., Coriant America Inc., and Coriant (USA) Inc. (collectively “Infinera” or “Defendant”).

These Disclosures are based on information currently available to Plaintiff. Plaintiff reserves the right to supplement these Disclosures consistent with the local rules or authorized by this Court.

A. Patent Rule 3-1(a): Asserted Claims

Capella asserts that Defendant infringes one or more of the following claims (“Asserted

(coupling). There are no substantial differences.

In addition, for each claim requiring “channel micromirrors”, Capella asserts that the element is present literally and under the doctrine of equivalents in the Accused Instrumentalities. A channel beam deflecting element performs the same function (to reflect its corresponding spectral channel), in the same way (reflection), to achieve the same result (optical coupling). There are no substantial differences.

E. Patent Rule 3-1(e): Priority Dates

The Asserted Claims are entitled to priority dates at least as early as March 19, 2001.

F. Patent Rule 3-1(f): Identification of Instrumentalities Practicing the Claimed Invention

Capella previously designed and sold WSS products including: Wavepath 4500, and CR-EX 1x20 WSS. Those products practiced the claims of the patents.

II. P.R. 3.2. Document Production Accompanying Disclosure

Pursuant to Patent Rule 3-2, Capella submits the following Document Production Accompanying Disclosure, along with an identification of the categories to which each of the documents corresponds.

A. Patent Rule 3-2(a) documents:

Capella is presently unaware of any documents not previously produced in the prior litigation involving Coriant and Tellabs sufficient to evidence any discussion with, disclosure to, or other manner of providing to a third party, or sale of or offer to sell, the inventions recited in the Asserted Claims of the Asserted Patents prior to the application date or priority date for the Asserted Patents. A diligent search continues for documents and Capella reserves the right to supplement this response.

CONFIDENTIAL**B. Patent Rule 3-2(b) documents:**

Capella is presently unaware of any documents not previously produced in the prior litigation involving Coriant and Tellabs that relate to conception, reduction to practice, design, and development of each claimed invention created on or before the application date of patents-in-suit or priority date identified pursuant to P. R. 3-1(e), as disclosed above. A diligent search continues for other documents and Capella reserves the right to supplement this response.

C. Patent Rule 3-2(c) Documents:

The following previously produced documents contain file histories for the Asserted Patents: CAPELLA0000001-009433. Additional U.S. file history documents since 2014 are available at <https://portal.uspto.gov/pair/PublicPair>. Capella hereby designates the entire prior file history production to Coriant and Tellabs for this litigation along with the additional file histories since 2014 and will reproduce physical copies (or provide a link to such materials) upon request. The same confidentiality designations and protections apply.

CONFIDENTIAL

Dated: May 25, 2020

By: /s/ Charles Everingham IV
Charles Everingham IV (TX SBN 00787447)
Email: ce@wsfirm.com
T. John Ward (TX SBN 20848000)
Email: tjw@wsfirm.com
Claire Abernathy Henry (TX SBN 24053063)
Email: claire@wsfirm.com
Andrea Fair (TX SBN 24078488)
Email: andrea@wsfirm.com
WARD, SMITH & HILL, PLLC
PO Box 1231
Longview, TX 75606
Telephone: (903) 757-6400
Facsimile: (903) 757-2323

Robert D. Becker (Cal. Bar 160648)
rbecker@manatt.com
Christopher L. Wanger (Cal. Bar 164751)
cwanger@manatt.com
MANATT, PHELPS & PHILLIPS, LLP
1 Embarcadero Center, 30th Floor
San Francisco, CA 94111
Telephone: (415) 291-7400
Facsimile: (415) 291-7474

Attorneys for Plaintiff,
CAPELLA PHOTONICS, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served on all counsel of record who have consented to electronic service on this 25th day of May, 2020.

/s/ Charles Everingham IV
Charles Everingham IV